

58-68-601 Mentally incompetent or incapacitated osteopathic physician.

(1) As used in this section:

- (a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.
- (b) "Mental illness" is as defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines an osteopathic physician and surgeon is an incapacitated person or that the physician or surgeon has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the osteopathic physician and surgeon upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the osteopathic physician and surgeon, in writing, of the suspension.

- (3)
- (a) If the division and a majority of the board find reasonable cause to believe an osteopathic physician and surgeon, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing osteopathic medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the osteopathic physician and surgeon with a notice of hearing on the sole issue of the capacity of the osteopathic physician and surgeon to competently and safely engage in the practice of medicine.
 - (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

- (4)
- (a) Every osteopathic physician and surgeon who accepts the privilege of being licensed under this chapter gives consent to:
 - (i) submitting at the physician's or surgeon's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and
 - (ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
 - (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
 - (i) the osteopathic physician and surgeon has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and
 - (ii) immediate action by the division and the board is necessary to prevent harm to the osteopathic physician and surgeon's patients or the general public.
 - (c)
 - (i) Failure of an osteopathic physician and surgeon to submit to the examination ordered under this section is a ground for the division's immediate suspension of the osteopathic physician and surgeon's license by written order of the director.
 - (ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the osteopathic physician and surgeon and was not related directly to the illness or incapacity of the osteopathic physician and surgeon.

(5)

- (a) An osteopathic physician and surgeon whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.
- (b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the osteopathic physician and surgeon's patients or the general public.
- (6) An osteopathic physician and surgeon whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the osteopathic physician and surgeon, under procedures established by division rule, regarding any change in the osteopathic physician and surgeon's condition, to determine whether:
 - (a) the physician or surgeon is or is not able to safely and competently engage in the practice of medicine; and
 - (b) the physician or surgeon is qualified to have the physician's or surgeon's license to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session